IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24570 of 2004

Between:

D. Ravi Kumar, S/o. Koteshwara Rao,
Karimnagar Dsitrict SC service Co-Operative Society Ltd.,
Karimngar, Karimngar District.

..... PETITIONER

AND

1 Andhra Pradesh Scheduled Castes Co-Operative Finance Corporation Ltd., rep. by the Managing Director, Telugu Samkshema Bhavan, Masab Tank, Hyd.
2 The District Collector, Karimnagar District, Karimngar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari and call for records relating to and connected with proceedings No.W12/3648/2004 dt. 23.12.2004 of the second respondent and quash or set aside the same as illegal, without jurisdiction and competence and unconstitutional and to grant all consequential and pass such other order or orders may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.NAVEEN RAO

Counsel for the Respondents: MR.M.V.S.SURESH KUMAR

The Court, at the admission stage, made the following :

THE HON'BLE MR JUSTICE K.C. BHANU

–

WRIT PETITION NO: 24570 2004

–

ORDER:

–

–

Challenging the proceedings No.W12/3648/2004 dated 23-12-2004 issued by the 2nd respondent-the District Collector, Karimnagar District, Karimnagar, in placing the petitioner under suspension, the present writ petition has been filed.

2. The brief facts that are necessary for disposal of the present writ petition are stated as follows:

The petitioner joined in service as Assistant Executive Engineer in the 1st respondent- AP Schedule Castes and Cooperative Finance Corporation Limited (for brevity 'Corporation), Engineering Wing, Karimnagar District. Thereafter, he was promoted to Deputy Executive Engineer. He was given full additional charge of Executive Engineer, as there was a vacancy. On a false news report published in the local newspaper, the 2nd respondent appointed the Revenue Divisional Officer to enquire into the matter. The Revenue Divisional Officer, in turn, directed the Mandal Revenue Officer to conduct an enquiry and after conducting the enquiry, the Mandal Revenue Officer submitted a report. Based on the report, the 2nd respondent passed the order under impugned.

3. According to the petitioner, the said order is without competency and jurisdiction and is liable to be set aside. He further contended that the 2nd respondent is neither an appointing authority nor the disciplinary authority and he has no role to play as the Engineering Wing is under the direct control of the Managing Director of the 1st respondent-Corporation. Hence, the present writ petition.

4. The first respondent-Corporation filed a counter-affidavit stating that it is constituted and registered under the A.P. Co-operative Societies Act. As per the bye-laws of the District Society, the 2nd respondent is the Ex-Officio President of the District Co-operative Schedule Castes Co-operative Societies Limited, Karimnagar. In order to implement the construction work undertaken by the District Society, the Government of Andhra Pradesh issued G.O.Ms.No.200 dated 12-09-1985, creating Engineering Wings in the District temporarily. The Government also set out staffing pattern as per the GO. As per the GO, the District Collector is the appointing authority for the staff in the Engineering Wing. As per the Government Memo dated 12-09-1985 authorizing the District Collector to appoint Engineering staff to implement and supervise the work.

5 . While so, the petitioner was appointed as Assistant Executive Engineer by the 2nd respondent, vide Proceedings dated 21-04-1986. The petitioner herein was promoted to Deputy Executive Engineer vide proceedings dated 25-05-2004. It is submitted that the 'Andhra Pradesh Scheduled Castes' Finance Corporation and District Scheduled Castes Service Co-operative Societies Engineering Service Rules (for brevity 'Service Rules') provide that the post of Deputy Executive Engineer has to be filled up by promotion from Assistant Executive Engineer and Assistant Engineer's in the ratio of 2:1. As per the Rule 4 of the Service Rules, the Managing Director will have over all administrative control over the technical employees working in the Engineering Wing while the Chairman of the District Society will exercise powers over the employees working in the Districts. The petitioner was placed under suspension on the allegation of mis-utilization of rice of about 1084.30 quintals. The 2nd respondent issued the said proceedings in the public interest. The 2nd respondent also forwarded the order of suspension to the Managing Director for taking necessary action and the Managing Director ratified the action. Hence, there are no grounds to interfere with the impugned proceedings.

6. A reply affidavit has been filed by the petitioner that the services of Deputy Executive Engineers are regulated by the provisions of the Service

Rules. According to the said Service Rules, the appointing authority to the post of Deputy Executive Engineer is the Managing Director of the Corporation. The petitioner was promoted by the Managing Director on 25-05-2004. Thus, no authority below the status of appointing authority is competent to place the services of the employee under suspension, and therefore, the order of the 2nd respondent is vitiated and without justification. On detailed enquiry, the General Manager, Karimnagar Dairy, submitted a report dated 06-02-2005 to the 2nd respondent exonerating the petitioner from the allegation. He also recommended to the 2nd respondent to revoke the suspension. Hence, the order is wholly illegal.

7. The learned counsel for the petitioner contended that as per the Rules of the 1st respondent-Corporation, the Managing Director is the competent authority to place the employee under suspension and the petitioner was promoted by the Managing Director of the 1st respondent-Corporation as Deputy Executive Engineer. Therefore, the Managing Director is competent authority to place the petitioner under suspension. Therefore, the impugned order suffers from serious error of jurisdiction, hence, he prays to allow the writ petition.

8. On the other hand, the learned standing counsel for the 1st respondent contended that the 2nd respondent is the appointing authority for the Assistant Executive Engineer and as a matter of fact, the petitioner was appointed by the District Collector and therefore, he was placed under suspension.

9. It is a fact that the petitioner was appointed as an Assistant Executive Engineer by the District Collector vide proceedings dated 21-04-1986 as per the bye-laws. It is not in dispute that the 2nd respondent is the ex-officio President of the District Schedule Casts Services Cooperative Societies Limited, Karimnagar. It is also not in dispute that the petitioner was promoted to Deputy Executive Engineer by proceedings dated 25-05-2004, issued by the Managing Director of the 1st respondent-Corporation.

10. The services of the petitioner are governed by the Rules framed for the Technical staff of the engineering wing of the Andhra Pradesh Schedule Castes Cooperative Society of Hyderabad. It is not disputed before this Court

that for the post of Deputy Executive Engineer, the Managing Director is the appointing authority. As per Rule 4 of the Service Rules, it is clear that the Managing Director will have over all administrative control over the technical employees working in the engineering wing of Schedule Casts Co-operative Societies in the state while the Chairman of the District Societies will exercise powers over the employees working in the district.

11. So, as seen from these rules, the appointing authority can take disciplinary action against the persons in the cadre of deputy executive engineers. The chairman of the District Societies will exercise powers over the employees working in the district. But, that does not mean the 2nd respondent can take the role of appointing authority, though the petitioner was initially appointed as an Assistant Executive Engineer by the 2nd respondent, but at the same time, he was promoted as a Deputy Executive Engineer by the 1st respondent. Therefore, the 1st respondent is the competent authority so as to take any disciplinary action against the persons come within the category of Deputy Executive Engineers. Therefore, the 2nd respondent has no jurisdiction to place an employee under suspension.

12. The learned counsel for the 1st respondent-Corporation contended that the action of the 2nd respondent was ratified by the Managing Director of the 1st respondent-Corporation in his proceedings dated 30-12-2004 and therefore, it can be said that the impugned order does not suffer from any incurable legal infirmities.

13. On this aspect, the learned counsel for the petitioner relied upon a decision reported in ***INAYATHULLA S. v. DY.CONSERVATOR OF FORESTS,*** wherein, it was held that:

> "…The order of suspension requires application of mind and to arrive at a decision that a disciplinary enquiry is required to be held against the official who is going to be placed under suspension. That being so the order of ratification which does not satisfy any of the aforesaid requirements cannot even be treated as an independent order of suspension, and as such, it cannot be held to be a valid order so as to place the official under suspension at least from the date of its passing…."

14. The learned counsel for the petitioner also placed strong reliance on the decision reported in ***THE MARATHWADA UNIVERSITY v. SESHRAO BALWANT RAO CHAVAN***, wherein it was held that:

> " These principles of ratification apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is *ab initio* void and cannot be ratified."

15. In this case, as per the Rules, the Managing Director of the 1st respondent-Corporation is the appointing authority for category of Deputy Executive Engineers. Therefore, the power of disciplinary action against the category of Deputy Executive Engineers must be exercised only by the 1st respondent-Corporation. But, the said power cannot be exercised by others unless it is delegated. Therefore, the 2nd respondent lacks jurisdiction to place the employee under suspension. Hence, the suspension order passed vide proceedings dated 23-12-2004 are illegal and without jurisdiction.

16. Accordingly, the writ petition is allowed, the impugned proceedings dated 23-12-2004, issued by the 2nd respondent-District Collector, Karimnagar District are set aside. No costs.

March 21, 2005

KVR

To

1 Andhra Pradesh Scheduled Castes Co-Operative Finance Corporation Ltd., rep. by the Managing Director, Telugu Samkshema Bhavan, Masab Tank, Hyd.
2 The District Collector, Karimnagar District, Karimngar.

3 Two C.Ds.